



उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

19

मामला क्रमांक सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<u>HIGH COURT OF CHHATTISGARH AT BILASPUR</u> <u>CRIMINAL APPEAL NO. 527 OF 2002</u> <u>APPELLANT</u> Madvi Boti son of Madvi Mana aged 56 years, cultivator and labour R/o Tondapal, P.S. Frezapur Bastar (C.G.) <u>VERSUS</u> <u>RESPONDENT</u> State of Chhattisgarh Through : P.S. Jagdalpur (C.G.) Present: Ms. Madhunisha Singh, counsel for the appellant. Mr. Sushil Dubey, learned GA for the State/respondent. <u>ORAL JUDGMENT</u> (30th August 2007) <u>Dhirendra Mishra, J</u> The appellant has preferred this appeal against the judgment of conviction and order of sentence dated 16th March 2002 passed in S.T.No. 520/2001 whereby learned Additional Sessions Judge, Bastar at Jagdalpur has convicted the appellant under Section 376(1) of the IPC and sentenced him to undergo R.I. for seven years, pay a fine of Rs.1,000/- and in default of payment of fine to further undergo R.I. for one year.	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	2. Allegation against the present appellant is that he committed rape with the prosecutrix on 26.10.1980 at about 3.00 p.m. in village Tondapal. As per case of the prosecution the prosecutrix and his sister Lakhmi (PW-4) were going to village Bade Bodal from their parental home at village Chhindbahar to her husband and the accused followed them. When they reached near forest of Tondpal, the accused ran towards Lakhmi with axe, as a result of which she got frightened and ran away. Thereafter, the accused caught the prosecutrix, raped her and ran away from there. The incident was narrated by the prosecutrix to her sister Lakhmi and also to her husband Fagnu (PW-3). The villagers convened Panchayat in the village twice, however, the accused had absconded. Thereafter, a report of Ex.P/1 was lodged on 4.11.1980. After completing investigation charge sheet was filed in the year 1980 in the absence of the accused in the Court of Judicial Magistrate First Class, Jagdalpur showing the accused absconding. The appellant was arrested only after 21 years of the incident on 17.10.2001 and thereafter the case was committed to the Court of Sessions Judge, Bastar for trial. 3. During trial the prosecution examined six witnesses and after recording statement of the accused under Section 313 of the Cr.P.C. and after hearing counsel for the respective parties, the accused/appellant was convicted and sentenced as mentioned in paragraph 1 of this judgment.	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	4. Learned counsel for the appellant submits that there is inordinate delay of nine days in lodging the report, however, there is no explanation for the same. The statement of the prosecutrix is not corroborated by the medical evidence as the doctor who examined the prosecutrix did not find any external or internal injury over the person of the prosecutrix and the appellant has been convicted only on the basis of uncorroborated testimony of the prosecutrix and her relatives. 5. On the other hand, learned counsel for the State/respondent supports impugned judgment of the trial Court. 6. I have heard learned counsel for both the parties and perused the material available on record as also the impugned judgment. 7. Conviction of the appellant is based on the statements of the prosecutrix, Poyami Lakhmi (PW-4) sister of the prosecutrix and Fagnu (PW-3) husband of the prosecutrix. The prosecutrix has stated before the Court that Lakhmi is her younger sister. On the date of incident she along with a child in her lap and younger sister Lakhmi were passing through the forest near Tondpal and the accused was following them. All of a sudden the accused came before her and caught her, her sister being frightened ran away from there and thereafter the accused rapped her after taking out her clothes and fled from there. She met	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	Lakhmi on way and narrated the incident and thereafter she narrated about the incident to her husband Fagnu. They also narrated the incident to father of the accused Mana. Panchayat was convened in the village twice, however, the accused did not participate in the Panchayat. She narrated the incident in the Panchayat also and thereafter report of Ex.P/1 was lodged in the police station. In the cross-examination this witness has stated that as the accused had threatened her sister with axe, therefore, she ran away from there. However, she has denied the suggestion that since her sister had seen her talking with the accused, she lodged a false report against the accused. 8. PW-3 Fagnu, husband of the prosecutrix has also stated that her wife informed him that Boti rapped her while she was passing through the forest with her sister Lakhmi. PW-4 Poyami Lakhmi, sister of the prosecutrix, has also stated that on the date of the incident she was passing through forest with her sister when the accused caught her sister. The accused was carrying axe, therefore, she got frightened. Suggestion of the defence that her sister had relations with the accused since before has been denied by this witness. She has stuck to her statement in examination-in-chief that the accused forcibly dragged her sister. 9. It is true that Dr. (Smt.) Manorama Tiwari (PW-5) has examined the prosecutrix on 4.11.1980 and did not notice any external or internal injury over her person and she has also	



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आदेश पत्रक (पूर्वानुबद्ध)

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	observed that there is no sign of forcible rape. However, considering the fact that the prosecutrix was examined after 10 days of the incident, absence of injuries on the person of the prosecutrix loses its significance. The defence has not been able to elicit anything in cross-examination of the above three witnesses, which makes their evidence unreliable or untrustworthy. Therefore, in the considered opinion of this Court, the trial Court has not committed any illegality or infirmity in placing reliance on the version given by the prosecutrix, which is duly corroborated by the statements of PW-3 Fagnu and PW-4 Poyami Lakhmi. 10. So far as delay of nine days in lodging the report is concerned, the witnesses have stated that after the incident Panchayat was convened in the village and the accused was called in the Panchayat, however, since he had absconded, he did not participate in the Panchayat proceedings and in these circumstances, the report was lodged after nine days. Moreover, conduct of the accused that after the incident he remained absconding from the village and could be arrested only after 21 years, is an additional circumstance which lends credibility to the statements of the above witnesses. 11. For the foregoing reasons, this Court is of the opinion that conviction of the appellant under Section 376(1) of the IPC by the	

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आदेश पत्रक (पूर्वानुबद्ध)

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	trial Court is based on reliable evidence available on record and the same does not call for interference. 12. Learned counsel for the appellant submits that the appellant is in jail since 17.10.2001 and as such, has already completed almost six years of jail sentence. He is a 63 years old man and is a poor tribal, therefore, his sentences may be reduced to the period already undergone by him. 13. Taking into consideration the fact that the appellant is a 63 years old person and also considering his financial background, this Court is of the opinion that ends of justice would serve if conviction of the appellant is maintained and he is sentenced to undergo R.I. for the period already undergone by him in place of R.I. of seven years and fine of Rs.1,000/-. 14. In the result, the appeal is partly allowed. While maintaining conviction of the appellant under Section 376(1) of the IPC, in place of the sentence imposed on him by the trail Court he is sentenced to the period already undergone by him. He be set at liberty forthwith if not required in any other case.	Sd/- DHIRENDRA MISHRA Judge